

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

AUG -2 2007

COURT OF APPEALS
DIVISION TWO

MANDY S.,

Appellant,

v.

ARIZONA DEPARTMENT OF
ECONOMIC SECURITY,
SEBASTIAN S., and JULIAN S.,

Appellees.

2 CA-JV 2007-0005

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. MD-04-0006

Honorable Kimberly A. Corsaro, Judge

AFFIRMED

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By Matthew J. McGuire

Patagonia

Attorneys for Appellant

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Tucson

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Department of Economic Security

E S P I N O S A, Judge.

¶1 Mandy S. appeals from the juvenile court's order terminating her parental rights to her children Sebastian and Julian, contending the Arizona Department of Economic Security failed to use diligent efforts to provide her appropriate reunification services and presented insufficient evidence to support the court's finding that termination was in the children's best interests. We will uphold a juvenile court's termination order unless no reasonable evidence supports the court's factual findings. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). Because we conclude the evidence supports the findings, we affirm the termination order.

¶2 Child Protective Services (CPS) took Mandy's six-month-old children into custody because they were being neglected; Mandy reported she had left them with someone while she served a prison sentence and did not know why they were at the home where they were neglected. The children were placed in a foster home and still lived there at the time of the termination hearing. Mandy was in and out of prison and a halfway house during the dependency proceeding. She attended several hearings by telephone, but did not appear for several others. According to the case reports, she had a few visits with her children between October and December 2005 and saw them again three times between August and December 2006. The case manager testified Mandy was not rearing any of her six children at the time of the termination hearing.

¶3 Mandy was unable to attend the termination hearing because of fear she would lose her job, an event her attorney said would constitute a violation of her parole conditions.

The juvenile court denied her attorney's motion to continue the hearing to allow Mandy more time to fulfill her case plan requirements. The Department presented evidence to support its motion to terminate Mandy's rights, and the court later granted the motion on the grounds the children had been in out-of-home placement pursuant to court order for both nine months and fifteen months. *See* A.R.S. § 8-533(B)(8)(a) and (b).

¶4 Mandy does not challenge the juvenile court's findings on most of the essential elements of the statutory grounds on which the court terminated her parental rights. She challenges only the Department's efforts in providing her appropriate reunification services, as it was required to do by § 8-533(B)(8).¹ She points to evidence about numerous classes she attended while she was in prison, asserting she completed all tasks CPS had assigned her in the case plan. She also contends CPS had "only occasional and half-hearted contacts" with her.

¶5 The Department does not dispute that Mandy completed a number of classes either while in prison or a halfway house in late 2004 and much of 2005. But, the Department points out, after she was released from prison in September 2005 and completed her stay in the halfway house in October or November, CPS paid an \$1,800 subsidy so she could obtain a residence for her and her children. Instead, Mandy disappeared, apparently violated the conditions of her probation, was reincarcerated for five months, and did not

¹Counsel cites the version of A.R.S. § 8-533 in effect prior to August 22, 2002, long before the motion for termination was filed. *See* 2002 Ariz. Sess. Laws, ch. 173, § 4.

contact the case manager again until September 2006. By that time, the Department had filed its motion to terminate Mandy's parental rights. At the time of the hearing on that motion, Mandy was working and had a place to live but was not in the same town as her children and had told the case manager she did not have time to participate in services. Moreover, her residence was not suitable for her children.

¶6 Mandy correctly notes the case manager's testimony that Mandy had complied with the recommendations of a psychologist who had evaluated her but ignores the more detailed tasks encompassed in the first recommendation. The psychologist recommended that a multidisciplinary team conference be held to address the requirements for reunifying the family. The case manager agreed that Mandy had participated by telephone in the three meetings held. But the psychologist's first recommendation was not simply to conduct team meetings. In full, the recommendation read:

It is highly recommended that a multidisciplinary team conference be held to determine the conditions of and reunification timetables. It is this psychologist's impression that [Mandy] needs to do a lot of work before she is reunified with her children. She needs to show a pattern of stability and responsibility in her work, affective life, maternal role, interpersonal functioning and towards herself. That is, she should prove that: 1) she can obtain and maintain a job in good standing for a substantial period of time, 2) is capable of providing for herself and her children, 3) is consistent in her visits with her children and is able to adequately provide for their affective needs without attending some of her children more than the other, 4) is able to remain drug free for at least six months, 5) can keep her anger and impulsivity under control, [6]) can exercise good judgment and develop[] a good insight into the extent of her difficulties.

¶7 In its findings, the juvenile court stated that Mandy had been incarcerated almost twenty-one months of the approximately thirty months her children had been in a foster home. The court also found: “Of the remaining nine months approximately two were spent in a halfway house following release from incarceration, almost three were spent on absconder status for parole/probation violations pending her arrest, and the most recent three months, she’s been living and working” in another town. Finally, the court found:

Save [Mandy’s] recent employment and recent abstinence from drug use, all substantial compliance with the case plan has occurred either while she was incarcerated or living in a halfway house. She is still on parole/probation, and her motivation at this time appears to be related to staying out of jail, to the exclusion of efforts to comply with her caseplan and reunify with her children.

The evidence supports those findings. Accordingly, we find no merit to Mandy’s complaints about the Department’s efforts to provide her appropriate reunification services.

¶8 Contrary to Mandy’s contention, the evidence supports the court’s conclusion that termination of her parental rights was in her children’s best interests. She artfully asserts the Department asked only one witness about the children’s best interests, ignoring the fact only one witness testified about anything at the termination hearing. And she asserts the court sustained her timely objection to the case manager’s opinion testimony, implying no evidence remained to support the court’s conclusion.

¶9 But the case manager testified about the children’s relationship with their foster parents, noting they are the only parents the children have known and they want to

adopt the children. She reported the children were happy and exhibited no behavior problems. In addition, she expressed her opinion that termination of Mandy's parental rights was in the children's best interests because of that relationship. Mandy only objected to the Department's question whether the children might have behavioral problems in the future if Mandy's rights to them were not terminated; the court sustained the objection because the case manager was not an expert in that area. In addition, the case manager's final report, which was admitted into evidence, stated the children needed permanency in their lives and noted "[t]here are no compelling reasons for these children to remain in foster care at their young age." The evidence was sufficient for the juvenile court to find, by a preponderance of the evidence, that terminating Mandy's parental rights was in the children's best interests. *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005).

¶10 Accordingly, we affirm the juvenile court's order terminating Mandy's parental rights.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge